Date of Meeting: April 5, 2005

BOARD OF SUPERVISORS

FINANCE/GOVERNMENT SERVICES COMMITTEE

ACTION ITEM

#8

SUBJECT: FISCAL POLICY AMENDMENT: SECTION 11; CRITERIA FOR ESTABLISHMENT OF SPECIAL ASSESSMENT DISTRICTS

ELECTION DISTRICT: County-wide

CRITICAL ACTION DATE: At the pleasure of the Board

RECOMMENDATION:
Staff: Staff recommends that the Finance/Government Services Committee recommend that the Board of Supervisors amend Section 11 Criteria for Establishment of Special Assessment Districts of the County's Fiscal Policy as contained in Attachment 1.

BACKGROUND: The County of Loudoun (the "County") and its governing body, the Board of Supervisors (the "Board"), is responsible to the County's citizens to carefully account for all public funds, to manage County finances wisely and to plan for the adequate funding of services desired by the public, including the provision and maintenance of facilities. The Board's policies of the Board are designed to establish guidelines for the fiscal stability of the County and to provide guidelines for the County's chief executive officer, the County Administrator. These policies are reviewed and updated periodically and are presented to the Board for approval. The last update was approved by the Board on March 15, 2005.

ISSUES: The County's current fiscal policy addressing Special Assessment Districts has not been amended in 15 years. The original policy never contemplated the potential magnitude of the special assessment/CDA financing requests that are currently being proposed. Due to the increased interest in Special Assessment Districts/CDAs, the County has the opportunity to adopt a more comprehensive policy. This proposed policy change was developed in consultation with the County's Financial Advisors and will provide residents, developers and the public with more detailed guidance as to information requirements, process, financial and credit limitations, and steps required prior to submitting a petition to the Board of Supervisors. The new policy should tie directly to the overall growth management policies and provide a purely financial assessment of the particular district financing. This assessment would include the likelihood for successful repayment and its impact on County debt levels.

FISCAL IMPACT: Review process - Without a comprehensive policy that requests detailed information on a Special Assessment District, the amount of staff time reviewing and analyzing the differing proposals will greatly increase.

ATTACHMENT 8

County's Financial Health - Without a comprehensive policy that requests detailed information and sets specific requirements on a Special Assessment District, the County's fiscal health and credit rating could be jeopardized.

ALTERNATIVES:

1. The Committee can recommend that the Board of Supervisors revise the Fiscal Policy language that is outlined in the item.

or

2. The Committee can revise which amendment as deemed appropriate by the Committee.

or

3. The Committee can recommend keeping the Fiscal Policy language as written.

DRAFT MOTION: I move that the Finance/Government Services Committee recommend that the Board of Supervisors amend Section 11 Criteria for Establishment of Special Assessment Districts of the County's Fiscal Policy as provided in Attachment 1.

ATTACHMENT: 1) Proposed Criteria for Establishment of Special Assessment Districts.

STAFF CONTACT: Kirby Bowers, County Administrator
Jack Roberts, County Attorney
Linda Neri, Deputy County Administrator
Mark Adams, Director, Management & Financial Services
Paul N. Arnett, Comptroller
Ben Mays, Deputy Chief Financial Officer

A8-2

Loudoun County Fiscal Policy – Proposed Comprehensive Policy

The existing County policy is shown in italics below.

<u>Section 11</u> - <u>Criteria for Establishment of Special Assessment Districts</u>

The following criteria are set forth as the minimum requirements that must be satisfied for the Board to lend its support to the creation of a special assessment district. As such, proposed districts that cannot meet these minimum requirements will have their requests for support rejected by the Board on the basis that it endangers the County's own credit worthiness in the financial markets. The Board takes this opportunity to emphasize that other considerations also may apply. In effect, these criteria are set forth only as the minimum standards for the establishment of a district. However, the ability to meet the criteria described below will carry considerable weight with the Board.

Loudoun County (the "County") has determined that under certain circumstances, the creation of a Special Assessment District (a "District") can further the economic development/quality growth management/redevelopment goals of the County. Of equal importance is that the County's financial assets not be at risk. These guidelines are designed to insure that the County goals are met.

1. **Limited to Projects which Advance County's Plans.** The proposed project or purpose for establishing a District must advance the County's adopted comprehensive plan or provide greater benefit to the ultimate property owners utilizing the proposed facilities.

2. **Description of Project and District Petition.** The petitioners shall submit for County staff review, prior to petitioning the County Board of Supervisors for action, a plan of the proposed District. This submission must include as a minimum:

   - The special assessment district's proposed petition to the County Board of Supervisors;
   - A map of district boundaries and properties served;
   - A general development plan of the district;
   - Proposed district infrastructure including probable cost;
   - A preliminary feasibility analysis showing project phasing, if applicable, and projected land absorption with the district;
   - A schedule of proposed special assessment district financings and their purpose;

A8-3

- A discussion of the special assessment district's proposed financing structure and how debt service is paid;
- The methodology for determining special assessments within the district;
- Background information on the developers and/or property owners like that found in an Offering Memorandum as well as currently proposed or previous involvement with other districts in Virginia and elsewhere; and,
- Level of equity, excluding any land, to be provided and when such equity would be incorporated into the proposed Plan of Finance.

The petitioner shall respond to and incorporate changes to the proposed petition requested by staff. Failure to incorporate changes will result in a staff recommendation against the creation of the special assessment district.

The petition must address:

- Protections for the benefit of the County with respect to repayment of debt, incorporation, and annexation;
- Protections for the benefit of individual lot owners within the District's boundaries with respect to foreclosure and other collection actions should their respective assessment be paid or is current; and
- Payment of the County's costs related to the administration of the District, specifically including the County's costs to levy and collect any special tax or assessment.

3. **Consistency with County Planning Documents.** The petitioner must demonstrate how the project or purpose for establishing the District is/or could be consistent with the Comprehensive Plan, Zoning Ordinance, and if applicable, the Capital Improvement Program, the Capital Needs Assessment and the Adopted Capital Facility Standards.

4. **Impact on County Credit Rating.** The District, either individually or when considered in aggregate with previously approved Districts, shall not have a negative impact upon the County's debt capacity or credit rating. The majority of this debt will be considered and treated as overlapping debt. In order to protect the County's long term fiscal stability and credit standing, the total aggregate outstanding overlapping debt should not exceed 0.25% of the total assessed value of taxable property within the County; nor should the total aggregate outstanding overlapping debt exceed 15% of the County's total outstanding tax supported debt, during any year of the County's Six-Year Capital Improvements Program. Exemptions to this policy may be made if the projects to be financed directly replace capital projects in the current Capital Improvement Program. Maturities of special district debt shall approximate the average of the County's other special assessment debt.

It is the intent of the County that this debt be self-supporting. Debt is deemed self-supporting when sufficient revenue is generated for at least three consecutive years to pay all of the required debt payments.

5. **Due Diligence.** A due diligence investigation performed by the County or its agents must confirm petition information regarding the developers, property owners, and/or underwriting team, and the adequacy of the developer's or property owner's financial resources to sustain the project's proposed financing.

6. **Project Review and Analysis.** A financial and land use assessment performed by the County or its agents must demonstrate that the District's proposed development, financial, and business plan is sound, and the proposed project or purpose for establishing a District is economically feasible and has a high likelihood of success. The analysis must confirm why establishing a District is superior to other financing mechanisms from a public interest perspective.

7. **Petitioner to Pay County Costs.** The County may require that the Petitioner agree to cover the County's costs for all legal, financial and engineering review and analysis and to provide a suitable guaranty for the payment of these costs. The County's estimated ~~costs shall be itemized to show anticipated engineering, legal, and financial, consultant~~ and other fees.

8. **Credit Requirements.** The debt obligations are issued by the District to finance or refinance infrastructure of the project:

- *The Board will retain practical and legal control of any debt issued by the district.*
- *The Board will approve a district debt issuance only after it has been determined the issue can reasonably be expected to receive an investment grade rating from a nationally recognized statistical rating agency (i.e., Fitch, Moody's, Standard and Poor's). If the natural rating is not investment grade, the County will require the district to acquire a credit enhancement (i.e., letter of credit, bond insurance, etc.) or demonstrate some other form of financial safeguard to the bond purchasers.*
- The District's outstanding debt obligations as compared to the appraised value of property or adjusted appraised value if partial development has occurred within District boundaries as if the infrastructure being financed was in-place will be an important consideration in the ultimate review of the Project. As such, careful detailing of the level of debt as a percentage of the current and future appraisal value will be an important criteria.

9. **Requirement for Approved Financing Plan.** The ordinance creating the District shall include a provision requiring the District to submit a financing plan to the County for approval prior to the issuance of any District obligations. Such financing plan shall include details specific to the financing proposed to be undertaken, including, but not

limited to more complete and detailed information of those applicable items required under Paragraph 2 above.

10. **No Liability to County**. *The County shall not pledge either its full faith and credit or any moral obligation toward the repayment of principal and interest on any debt issued by the district.* The project must pose no direct or indirect liability to the County, and the developer and/or District must provide the type and level of surety acceptable to the County to protect the County from actions or inactions of the District as specified in the letter of intent at time of petition. All documents relating to the project shall reflect the fact that the County has no financial liability for present or future improvements connected with the project whether or not contemplated by the ordinance creating the District or as that ordinance may be amended. The ordinance will contain a provision that acknowledges that the County has no moral or legal obligation to support the debt of the district, but that the County retains the authority and ability to protect the County's credit.

11. **Conditions and Covenants.** Any ordinance creating a special district may include appropriate conditions related to the size and timing of District debt. In addition, the County may require covenants to be attached to the property that incorporate the salient commitments related to the proposed District improvements, the public benefits and the special assessments.

Annual Review. These guidelines shall be reviewed at least annually.

DAVENPORT
& COMPANY LLC
Est. 1863 • Member: NYSE • SIPC

MEMORANDUM

To:	Loudoun County Board of Supervisors
From:	David P. Rose Courtney E. Rogers Davenport & Company LLC
RE:	Recent Meetings with the National Bond Rating Agencies
Date:	January 31, 2005
cc:	Kirby Bowers, County Administrator

<u>Overview</u>

On January 19th, Davenport & Company LLC ("Davenport") in our capacity as Financial Advisor to Loudoun County visited with all three of the national credit rating agencies: Moody's Investors Service; Standard & Poor's Corporation; and Fitch Ratings, at their respective headquarters in New York with two Board Members, Vice-Chairman Tulloch and Supervisor Staton and several key County Staff representatives. The primary purpose of these meetings was to discuss the rating agencies' perspective on the County's use of a bond-financing tool known as Community Development Authorities ("CDAs") for primarily residentially based projects. CDAs are a form of a broad category of debt financing referred to as Special Assessment Bonds. Our party hoped to gauge any impact on the County's recently achieved **Aaa** rating from Moody's and positive, near term AAA rating designations from the remaining two credit agencies.

<u>Information Provided in Advance of Our Meeting</u>

Prior to our visit, in order to better facilitate an exchange of dialogue at the meeting, Davenport distributed a booklet dated November 29, 2004. (The County Administrator will see to it that all Board members receive a copy of this information.) The booklet included a cover memorandum from Davenport, under Tab 1 consisting of our request to discuss the current County Policy; possible modifications to the Policy; a sampling of the proposed CDA(s) being introduced to the County from the private sector and the relative magnitude of those proposals; samples of other recent CDA policies of several surrounding jurisdictions; and a draft of more comprehensive special assessment CDA policy for Loudoun recently developed by Davenport.

Attachment 10

Background

Nearly a decade ago, Loudoun County was the location for the first CDA financing to be successfully completed in the Commonwealth of Virginia. Namely, the Dulles Town Center Project: an entirely commercial development that was in part funded using approximately $30 million of such CDA bonds. The proceeds of that deal went toward infrastructure improvements including the building of an interchange off of Routes 7 and 28. Prior to authorizing the issuance of CDA bonds, members of our current Firm who were formerly with Wheat First Butcher Singer, serving as Financial Advisor to Loudoun, led a similar delegation of two Board Members and County Staff to New York to obtain assurances regarding the issuance of the Dulles Town Center CDA Bonds on the County's strong credit standing (i.e. rating). All parties considered the Dulles Town Center Development as a major potential economic development and revenue opportunity for the County.

What are CDA's and Special Assessment Financings?

Special assessment financings such as CDAs are limited obligations issued to fund improvement in a defined district of a municipality and are secured only by assessments on the properties in that district. Credit quality is constrained by the limited nature of the security, as well as by the fact that most special assessment bonds when originally issued are secured by assessments on largely undeveloped property.

CDAs have been and continue to be a practical tool for financing the development of limited areas, generally referred to as "districts", within a municipality by charging, or "assessing", only those properties which derive benefit from the projects financed, and not burdening the larger community or tax base. In Virginia, this funding mechanism has been primarily used for major commercial development. CDA assessment financing in Virginia has basically been used for infrastructure needs such as roads, utilities, or landscaping, but can also be used to fund municipal facilities such as schools and fire stations.

How do these CDA's Work?

Bonds are issued to fund capital projects and a reserve fund. Annual assessments are levied on district properties in an amount which, added together, equal the debt service due on the bonds in that year. In most states there are no or only limited provisions for providing coverage by levying assessments in excess of annual debt service; that is, annual assessments are almost always sum-sufficient. Typically, assessments are levied and collected along with general property taxes, but other collection procedures are used in some localities. The special assessment bonds such as CDAs are secured solely by the assessments paid by the properties in the assessment district; bondholders have no access to the General Fund or general property taxes of the municipality.

<u>What Loudoun County and Davenport Learned in New York</u>

First and foremost all three national rating agencies view Loudoun County as one of the nation's premier "credits". This is underscored by Moody's designation of **Aaa**, the highest rating attainable and Standard & Poor's and Fitch's ratings of **AA+** and **AA+** respectively, both a single notch below their own agencies highest credit ranking.

To that end, all three agencies expect that whatever policy(s) the County decides to either update or implement in anticipation of further CDA financing, it is expected to be consistent with the County's plan for growth management and debt policies. As such, several key questions were asked by the collective agencies that will require policy responses from the Board of Supervisors via Staff. These include:

1. How does a specific CDA(s) impact the County's current multi-year Capital Improvement Program? Does it allow for a minimization of planned General Obligation debt over this period by virtue of a particular CDA?

2. What public purpose does the particular CDA(s) bonding provide for the County?

A ***second*** major watershed observation of all these rating agencies was their view that any CDA debt, however issued, would be counted against the County as a form of "overlapping debt" for purposes of determining the overall debt burden and implications on the overall debt capacity of the County. At this point all three were vague in their method of how they would assign a level of burden to the County's existing debt profile but several further comments in this area were expressed. They included:

1. The nature of a particular CDA project would be important --- generally the more diverse the potential of debt repayment providers and less reliance on a single taxpayer, the more comfort to their credit review.

2. The magnitude of the CDA issuance of bonds relative to the County's overall debt profile will also be of importance. For example, the Dulles Town Center Project financing represented a relatively minor percentage of debt vs. the overall County's debt (at the time under 10%). Collectively, to the extent that CDA or other special assessment financing is in excess of these levels, their particular scrutiny of the County's overall direct, and now, in-direct debt burden becomes a variable weighed by all three during the County's rating review.

3. Questions such as what is the exact structure of the particular CDA and has, for example, an independent feasibility study been prepared on a given project financing are important. Moreover, what are the practical implications to the taxpayers of said district should the build-out proceed slower than planned?

The ***third*** main point we believe the rating agencies expressed to all in attendance is their caution that given Loudoun County's unique position as arguably the nation's fastest growing municipality, the need to plan carefully and deliberately so as to make certain that growth does not overwhelm County resources cannot be underscored. Specifically, all three were concerned that the potential usage of CDA style financing could accelerate the residential growth of the County and must serve, instead, as a part of the growth and facility management tools contained within the policies of the Board of Supervisors and Comprehensive Plan. To the extent that each CDA approved could demonstrate that it is consistent with the County's multi-year Plan of Finance, then the usage of a CDA(s) could be favorably received.

Finally, a ***fourth*** comment by the rating agencies was directed at Loudoun specifically being cognizant of your exemplary credit ratings. That is this; while the repayment of bonds from CDA(s)/special assessment financings are not technically a direct or indirect obligation of the County, practically speaking however, the rating agencies have an expectation that should one or more of these bond issues run into repayment trouble (i.e. flirt with default), it is not "unreasonable" to expect that the County would step into the void. This is, of course, no small expectation but is a vestige of the credit market's expectation of Loudoun County in maintaining its lofty credit standing. In essence, a highly rated jurisdiction like the County would be expected to step in and remedy the problem. This expectation will have an impact on the County's debt capacity.

The Importance of a Coherent and Fundamentally Sound Fiscal Policy

The County has had in place a fiscal policy addressing CDAs that is nearly 15 years old. The policy never contemplated the potential magnitude of the CDA/special assessment financing requests now on the horizon in Loudoun or other growth communities in the Greater Washington region. As a result, the County Board of Supervisors should consider expanding/updating the policy along the lines of a more comprehensive set of conditions. These should include a set of standards that any proposed CDA must meet, that ties directly to overall growth management policies and practices in addition to a purely financial assessment of the particular CDA financing; its likelihood for successful repayment and its impact on County debt levels.

Conclusion

Davenport understands this issue requires further discussion with the Finance/Government Services Committee in the near future. We look forward to assisting you and your staff as you further explore this issue.